

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

JEREMY JACOB BUCH

Appellant

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DOCKET NUMBER WD79336

DATE: March 21, 2017

Appeal From:

Circuit Court of Livingston County, MO
The Honorable Thomas Nichols Chapman, Judge

Appellate Judges:

Division Four
Mark D. Pfeiffer, Chief Judge Presiding, Thomas H. Newton, and Anthony Rex Gabbert, Judges

Attorneys:

Ellen Flottman, Columbia, MO

Counsel for Appellant

Attorneys:

Richard Starnes, Jefferson City, MO

Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI, Respondent, v.
JEREMY JACOB BUCH, Appellant

WD79336

Livingston County

Before Division Four Judges: Pfeiffer, C.J., Newton, and Gabbert, JJ.

A jury convicted Buch of the class C felonies of second-degree burglary, stealing, and unlawful possession of a firearm by a felon. The convictions arose from a burglary during which a number of firearms were stolen from a rural residence in Livingston County while the owner was away on vacation. The owner had set up a surveillance camera before leaving, and a number of photographs from images recorded on its SIM card were introduced at trial over Buch's objection. The circuit court denied Buch's motion to acquit him in spite of the jury's verdict or to grant him a new trial and sentenced him as a prior offender to seven years' imprisonment for burglary, seven consecutive years' imprisonment for stealing, and seven concurrent years' imprisonment for unlawful possession, for a total of fourteen years in the Department of Corrections.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division Four holds:

Buch argues that his sentence for stealing must be reversed under the plain meaning of the statute classifying the different degrees of stealing. RSMo. § 570.030 (2013). His case was on appeal when the Missouri Supreme Court ruled in *State v. Bazell*, 497 S.W.3d 263 (Mo. banc 2016), that stealing firearms could not constitute a class C felony under a plain reading of the version of section 570.030 in effect when Buch committed his crimes. The State agrees that *Bazell* applies to Buch's case and that it must be returned to the circuit court for resentencing on Count II for stealing within the class A misdemeanor range of punishment. We grant this point.

Buch also challenges the circuit court's discretionary decision to admit several of the unmonitored surveillance camera photographs at trial. He argues that, because no witness was present to personally observe what the camera's images captured and thus could not verify their accuracy, a proper foundation had not been laid for the court to admit them into evidence. He also argues that the sheriff's department selectively retrieved images captured by the camera over a four-day period, and these images did not show the commission of any element of the charged crimes. He contends that their admission further violated his right to a fair trial and due process because the sheriff's department failed to print all relevant images from the camera's sim card. We can overturn a conviction for an alleged evidentiary error only if the defendant proves prejudice, that is, shows a reasonable probability that in the absence of such evidence the verdict would have been different. Here, other evidence showed that firearms were stolen while the homeowner was on vacation. Another participant in the crime testified that Buch had planned to take the firearms, drove him to the residence, and took the firearms. Buch confessed to the crime and told the sheriff's department where the firearms could be found. The stolen firearms were found where Buch said they would be found in his residence. There was no prejudice. This point is denied.

Therefore, we reverse the sentence for stealing and remand for the circuit court to resentence Buch for a class A misdemeanor on that count, and we otherwise affirm his convictions.

Opinion by Thomas H. Newton, Judge

March 21, 2017

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